Supreme Court, U.S.
FILED
SEP 10 1993
OFFICE OF THE CLERK

No. 93-40

In The Supreme Court of The United States
October Term, 1993

John J. Scinto, Petitioner Pro Se

v.

R. David Stamm, et al
Respondents

On Petition for Writ of Certiorari to
The Supreme Court of Connecticut

Reply to Brief in Opposition

John J. Scinto, Petitioner Pro Se
101 Mill River Drive
Stratford, CT 06497
(203) 375-8596

Table of Contents

Table of Contents	i
Table of Authorities	ii
Statement of Case	1
Argument	1

Table of Authorities

Cases

Barde v. Bd of Trustees, 207 Conn 59 (1988) 9

Bowens v. BLE, 291 SE 2d 170 (NC App 1982) 8,9

Bailey v. BLE, 508 F Supp 106 (WD Tex 1980) 8

Cupples v. Watson, 204 F 2d 58 DC Rpts (DC Cir. 1953) 92 App DC 166 11

DeOrsey, Pet. of, 112 RI 536 (1973) 9,12

Dinan, App of, 157 Conn 67 (1968) 13

Dodd, In re App of 131 Conn 702 14

Edwards v. Mich BLE 394 Mich 949 (1975) 7

Fairfield Bar Comm v. Esterman 174 Conn 548 (1978) 13,14

Feldman v. St BLE, 438 F2d 699 (8 Cir. 1971) 8

Griffiths, In re App of, 162 Conn 249, 413 US 717 (1973) 13, 14

Heiberger v. Clark 148 Conn 177 (1961) 13,14,15

Loeb v. NY St BLE
144 App Div 2d 813 (1988) 8

Lucero v. Ogden,718 F2d 355 6

Mead, In re, 361 NE2d 403
(Mass 1977) 6,8

McKay, App of
706 P2d 684 (AK, 1985) 7,9

Mrotek v. Nair, 4 Conn Cir
313, 231 At12d 95 (1967) 15

O'Brien's Pet., 79 Conn 46 14

Richardson v. McFadden
540 F2d 744 (4 Cir, 1976) 9,10, 11

Rosenthal v. St Bar Ex Comm
116 Conn 409 14

Schware v. BBE of NM
353 US 232 (1957) 9

Scinto v. Stamm, 224 Conn 524
(1993) 1,2,6

Thorne, In re
635 P2d 22 (Utah 1981) 12

Truax v. Raich
239 US 33 (1915) 14

Tyler v. Vickery, 517 F2d
1089 (5 Cir 1975)reh den,
521 F2d 815, Cert Den; 426 US
940 (1976) 6

Welch v. Smith
468 F Supp 153 (1980) 13

Woodward v. Va Bd Bar Ex
420 F Supp 211 (ED, Va 1976) 11

STATEMENT OF THE CASE AND ARGUMENT

The petitioner asked for a bar examination committee hearing several times, but was denied each time. Furthermore, the respondents have stated that there is no right to a hearing in informational letters sent to the applicants, thereby rendering it futile to continue to seek a committee hearing.

Scinto v. Stamm, 224 Conn 524 (1993), holds inter alia, as admitted in respondents' Statement of the Case, that there is jurisdiction for a bar examination judicial hearing on grounds of manifest unfairness. This has been my claim all along and still is. The claim is that the grading was so grossly unfair on my July, 1989 and February, 1990

essays that it was manifestly unfair. On four of the twelve essay questions of the first exam I received a score of 1 out of a possible 7, although the answers were all basically correct. On one question I received a score of 1.5 which per se was proof that one grader gave me a 2 and another grader gave me a 1 on that question. Thus, the grader giving me a 2 would have passed me on the overall bar exam. That difference of 1/2 raw score point would have sufficed.

As for the second Scinto v. Stamm opinion, the "minor change" in it is contrary to procedural due process since it was made without notice to the petitioner until the respondents' brief in opposition was received. The "minor change" (Resp. br., f.n. 1) said that the probability of an applicant's being

erroneously failed on two bar exams was not really 1 in 1,000,000 as stated in the first opinion, but 1 in 10,000. That is 100 times more probability, and is much more than a "minor change." It is another example of the multitude of errors committed in the grading of the petitioner's two contested bar exams.

Resp. br., f.n. 2 evidences still another error by the respondents in alleging that I received a score of 260.37 on the February, 1990 exam, whereas, at page A3 they allege that it was 260.67. Furthermore, re this exam, the committee published an errata letter admitting that two of the graders had erred in their grading methods. Moreover, my scoresheet shows an MBE raw score of 120 compared to the Connecticut average of 119.95. However, it also shows an MBE scaled score of

135.12 for me compared to 135.28 for the Connecticut average. That is clearly a computation error. Yet the respondents refused to respond to my allegations about it, and the Connecticut Supreme Court ignored it.

Another error was made when the Connecticut Supreme Court refused to reverse the trial court's granting of the respondents' cross motion for summary judgment on the ground of lack of subject matter jurisdiction. In Connecticut only a motion to dismiss may be used to challenge subject matter jurisdiction.

Furthermore, the petitioner filed his motion for summary judgment prior to the respondents' cross motion for summary judgment. Yet the trial court heard the cross motion first, and then decided not to hear the petitioner's motion.

However, the trial court did hear it later on the petitioner's motion to reconsider.

Regarding evidence, the petitioner submitted the particularly important evidence of his three peronal affidavits, the committee's sample answers, and his memorandum in opposition to the motion to dismiss which was admitted as evidence by Judge Thim. None of it was timely or properly objected to by the respondents.

Timeliness, furthermore, was lacking when the respondents filed this current brief in opposition. My petition for certiorari was filed on June 2, 1993. Then the Chief Clerk required a table of authorities to be added to it. No substantive changes would have been allowed, nor were any made. The respondents had until July 2, 1993 to file a

brief in opposition. However, they did not file one until July 30, 1993. That was 28 days late, and the petitioner went on vacation before receiving his copies. For the above reasons the brief in opposition should be discountenanced.

Next, the fact that the Connecticut Supreme Court found the grading system to be "carefully crafted" (Resp. br.5) (Scinto v. Stamm, supra, at p. 533) does not detract from the essence of the rationale of their holding: that unlimited reexamination provides sufficient due process. This was established by the court at p. 537 citing three cases with that rationale: Tyler v. Vickery, 517 F2d 1089, 1101, 1104 (5Cir. 1975), reh. den., 521 F2d 815 (5 Cir.), cert. den. 426 U.S. 490 (1976)at 535, 536, 537; Lucero v. Ogden, 718 F2d 355, 358; and In re Mead, 361 NE2d 403, 405 (Mass.

1977). Each of them held that the right to unlimited reexamination is sufficient due process and obviates the need for a hearing. This conflicts with Michigan and Alaska and other states. Both allow unlimited reexamination, bar examination committee hearings, and judicial hearings. Edwards v. Mich. BLE, 394 Mich 949 (1975); App of McKay, 706 P2d 684 (AK, 1985).

The respondents' quotation of the court's description of the grading procedures does not diminish the petitioner's arguments (Resp. br., 5-8).

At p. 9 the respondents err in saying that my citations of my petition at p. 14-17 are from lower courts. In fact, they are from United States Circuit Courts of Appeal and District Courts, and high state courts.

Three of my citations referred to

by respondents (Resp. br. 9), contrary to their argument, clearly are authority for bar examination judicial hearings. Bowens v. BLE, 291 SE2d 170, 173 (N.C. App. 1982); Feldman v. St. Bd. LE, 438 F2d 699, 702-703 (8 Cir. 1971); and In re Mead, 36 NE2d 403, 406.

Even if Loeb v. NY St Bd LE, 144 App Div 2d 813 (1988) and Bailey v. Bd of LE, 508 F Supp 106 (WD Tex. 1980) are taken to grant administrative hearings on bar exam regrading, they are authority for some kind of hearing; whereas, the Connecticut Supreme Court and the committee have denied me any kind of hearing.

Moreover, my other citations criticized by the respondents do hold as I stated. At the bottom of Resp. br. p. 9 the respondents state that several of my citations hold that there is no right to

a judicial hearing on bar exams if there are no clear, probative facts establishing inter alia manifest unfairness. That is to say that there is a right to a judicial hearing on bar exams if there are clear, probative facts establishing inter alia manifest unfairness. That is my position. Furthermore, the correct statement of these holdings is that an allegation of the above is sufficient. That is, you do not have to prove your case before you are entitled to a hearing on it. Barde v. Bd of Trustees, 207 Conn 59 (1988); App of McKay, supra at 686 (allegations of gross grading errors); Bowens v. Bd of LE, 291 SE2d 170, 173 (NC, 1982); Petition of DeOrsey, 112 RI 536, 543 (1973); Richardson v. McFadden, 540 F2d 744, 750 (4Cir., 1976); Schware v. BBE, NM, 353 U.S. 232, 239 (1957).

The cases cited by the respondents' brief at the top of p. 10 do allow bar exam hearings for manifest unfairness, but contrary to the respondents' statement, whether my essays were graded manifestly unfairly is very much at issue. One example of it is that on the July, 1989 essays I received four grades of 1 out of a possible 7 though the answers were all basically correct and clearly explained.

Going on with Resp. br. 10 we see that the respondents misapply Richardson v. McFadden, supra at 752. The court said that review is more effective than reexam, and that an adequate review of failing papers must be provided. A failing candidate receiving scores comparable to a passing candidate's scores with no consistently applied distinction between them deserves to pass also.

Id, at p. 751. The court ordered the United States District Court to order that two of the plaintiffs be certified as having passed the South Carolina Bar. Id, p. 752.

The respondents further allege that two of my citations did not concern hearings into bar exam answers at all. They are Woodward v. Va Bd Bar Ex, 420 F Supp 211 (ED, Va 1976) and Cupples v. Watson, 204 F2d 58 DC Reports (DC Cir 1953), 92 App DC 166. However, Woodward at p. 214 concludes that the job relatedness of the Virginia bar exam will be measured by the principles of Richardson v. McFadden, supra. At p. 748 Richardson held that under the 14th Amendment, the bar exam must be job related. At p. 752 it confers a bar exam judicial hearing right. Therefore, so does Woodward.

In Cupples a United States District

Court read the plaintiff's exam to practise patent law before the United States Patent Office. He also read the plaintiff's answers and reviewed the grading. He found that the Patent Office had acted fairly and without discrimination. The United States Court of Appeals for the DC Circuit affirmed.

Re: Resp. br. , f.n. 6 the bar examining committees regraded in DeOrsey, supra; and in the Thorne case, 635 P2d 22 (Utah 1981)but these were overseen by the courts per the two decisions.

Resp. br., f.n. 7 misstates that none of the petitioner's prior Connecticut cases concerns bar exam judicial hearings. Pet. Br., 19. However, the trial court allowed the petitioner's memorandum in opposition to motion to dismiss into evidence since the transcript of his quotations from it came

out with many errors. The memorandum states at p.7 that the committee admits in their memorandum in support of motion to dismiss from the United States District Court, of September 13, 1983, "In Connecticut an unsuccessful bar candidate may petition the Superior Court for a hearing relative to the unfavorable decision by the state bar examining committee. In re App of Dinan,157 Conn 67, 71 (1968); In re App of Griffiths, 162 Conn 249, 252 (1972). In addition the procedure described in Welch v. Smith, 468 F Supp 153 (1980) as administered by the Vermont Supreme Court (Vermont's high state court) is identical to that which exists in Connecticut as administered by the Superior Court. Fairfield Bar Comm. v. Esterman, 174 Conn 548, 551 (1978); Heiberger v. Clark..." (148 Conn 177,

1961).

The Esterman case held at p. 550: "Proceedings for admission of attorneys to practise law in our courts are not actions or suits at law but are in the nature of investigations by the court or their representatives to determine whether the particular candidate is qualified to become an officer of the courts. Heiberger v. Clark, supra at 182; In re App of Dodd, 131 Conn 702, 707; Rosenthal v. St Bar Ex Comm, 116 Conn 409, 415. The end result of the proceedings is in the nature of a judgment from which an appeal lies to this court. Heiberger v. Clark, supra, 183; In re App of Dodd, supra, 707; O'Brien's Pet., 79 Conn 46, 59."

In re App of Griffiths, supra, 252; 413 U.S. 717 (1973), cited Truax v. Raich, 239 U.S. 33, 35 (1915)which

holds that the right to the common occupations is the very essence of the personal freedom, and opportunity of the 14th Amendment.

In Mrotek v. Nair, 4 Conn Cir 313; 231 Atl 2d 95, 97 (1967) the plaintiff failed the Connecticut bar exam three times and he sought exam materials and notes. p. 97. At p. 100: "While statutes have been passed to aid the judicial department of each state in the admission of attorneys to practise in the courts, no statute can control the judicial department; the rule-making power is in the Superior Court." Heiberger v. Clark, supra, 169.

"The plaintiff is not without a right to be heard on his complaint, for such a right may be exercised by a petition to the Superior Court." Id, p. 100.

As for the remainder of p. 12 of

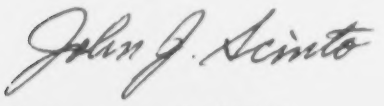
the respondents' brief, the petitioner holds to the brief of his petition for writ of certiorari.

The petitioner has disputed much of the respondents' evidence, and has objected to much of it. Even the petitioner's citations in support of the correctness of his bar exam answers is evidence disputing the respondents' arguments.

The respondents' characterization of the Connecticut bar examination as "state of the art" is faulty in many ways. There is a bound beyond which essay grading becomes grossly arbitrary and manifestly unfair. I submit that the bound has been exceeded in this case.

For the foregoing reasons the respondents' brief should not be countenanced.

Respectfully submitted,



John J. Scinto
Petitioner Pro Se
101 Mill River Drive
Stratford, CT 06497
Tel. (203) 375-8596